

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

BENNIE PINO,

Petitioner,

vs.

Civ. No. 18-565 KG/GJF

MESCALERO TRIBAL COURT,

Respondent.

**ORDER SEVERING HABEAS CORPUS AND CIVIL RIGHTS CLAIMS
AND DIRECTING OPENING OF A NEW CIVIL RIGHTS CASE**

THIS MATTER is before the Court *sua sponte* under Fed. R. Civ. P. 21. Petitioner Bennie Pino instituted this proceeding by a Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus against the Mescalero Tribal Court asserting an Indian Civil Rights Act (“ICRA”) challenge to his Tribal conviction and sentence. ECF No. 1 at 1-10. However, attached to the Petition is also a Prisoner’s Civil Rights Complaint asserting claims of deprivation of constitutional rights against BIA Law Enforcement Mescalero Agency. ECF No. 1 at 11-16.

Under Federal Rule of Civil Procedure 21, the Court may sever any claims against a party. Petitioner’s habeas corpus claims under the Indian Civil Rights Act may only proceed against tribal officials and seek relief different from civil rights claims against federal officials. *See, e.g., Burrell v. Armijo*, 456 F.3d 1159, 1174 (10th Cir. 2006); *E.F.W. v. St. Stephen's Indian High School*, 264 F.3d 1297, 1305-06 (10th Cir. 2001) (civil rights claims may not be maintained against tribal officials). Therefore, the Court will sever the civil rights claims against BIA Law Enforcement Mescalero Agency and direct the Clerk of the Court to open a new civil rights case. This case, Civ. No. 18-565 KG/GJF, will proceed solely as an ICRA habeas corpus proceeding under 25 U.S.C. § 1303.

IT IS ORDERED that the civil rights claims against BIA Law Enforcement Mescalero Agency by Bennie Pino are severed from Pino's habeas corpus claims under 25 U.S.C. § 1303 and the **CLERK** is **DIRECTED** to open a new prisoner civil rights case *nunc pro tunc* as of June 18, 2018 for the Prisoner's Civil Rights Complaint filed by Pino against BIA Law Enforcement Mescalero Agency. *See* ECF No. 1 at 11-16.

IT IS SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE